IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1348

MARY ANN GUSTIN, *Petitioner*

v.

RONALD D. STEGALL and FRANK HOWARD, Administrator, Estate of Ann C. Howard, Deceased, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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Petitioner prays that a writ of certiorari issue to review the judgment of the District of Columbia Court of Appeals, entered in the above entitled case on November 11, 1975, rehearing denied December 19, 1975.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Appeals entered on November 11, 1975, printed in the Appendix, *infra* p. 1a, is reported in 347 A.2d 917. The opinion of the Superior Court of the District of Columbia, printed in the Appendix, *infra* p. 15a, is unreported. The order of the Court of Appeals denying the Petition for Rehearing, printed in the Appendix, *infra* p. 35a, is unreported.

JURISDICTION

The judgment of the Court of Appeals was entered on Novembre 11, 1975. A timely Petition for Rehearing was denied on December 19, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

1. May a court of appeals refuse to decide a point of law determinative of defendant's property rights based on defendant's refusal to acknowledge the validity of a sales contract which defendant contested in the case below based on fraud, and thereby deny defendant her due process rights under the Fourteenth Amendment of the Constitution of the United States?
2. May a court of appeals affirm a judgment of a trial court in favor of the plaintiff in an equity proceeding where:
   (a) A contract for the sale of real property which the plaintiff sought to have specifically enforced was acknowledged by the trial judge to have been fraudulently signed;
   (b) This same contract was not signed at the end thereof, after certain modifications;
   (c) The record contains substantial evidence with respect to such defense;
   (d) The court of appeals has not stated any findings of fact or conclusions of law with respect to the contract not being signed at its natural ending?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Amendment XIV, Section 1 to the Constitution of the United States of America:

> No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; *nor shall any state deprive any person of life, liberty, or property, without due process of law;* nor deny to any person within its jurisdiction the equal protection of the laws.

District of Columbia Code Annot. § 45-401 (1973):

> No Deeds of conveyance of either real or personal estate by individuals shall be executed or acknowledged by attorney.

STATEMENT OF THE CASE

Petitioner Mary Ann Gustin and her mother, Ann C. Howard, now deceased, owned legal title to property located at 712 East Capitol Street, N.E., Washington, D. C., as joint tenants with rights of survivorship.

It was well known to all parties that the beneficial owner of this property was Paul Gustin, Mrs. Gustin's son. Paul Gustin supplied all of the funds for the down payment and legal title was placed in the names of Mrs. Gustin, the Guardian of Paul's estate and Mrs. Howard, his grandmother, for managerial reasons only. Paul Gustin was awarded Twenty-Six Thousand Dollars ($26,000.00) at age 6 by an Act of Congress, as compensation for negligent acts of the United States Government which caused the loss of his arm, foot, and massive internal injuries. The Congressional intent was to have this money invested so Paul would have a source of revenue to cover his medical costs over his lifetime.

On or about February 11, 1973, Ann C. Howard, who was acting as the real estate manager for this and three other properties purchased with Paul's funds and for his benefit, signed a sales contract with Ronald P. Stegall. Ann C. Howard also fraudulently signed the name of Mary Gustin to this contract. It was later discovered that Ann C. Howard, working with the Robert Wenz Real Estate, Inc., either sold or attempted to sell all of Paul Gustin's property. This was done without the knowledge or consent of either Paul Gustin or Mary Gustin.

On property located at 14 Ninth Street, S.E., Washington, D. C., Ann C. Howard, with the assistance of Robert Wenz, fraudulently signed "Mary Gustin," who was sole owner of the property, to a deed transferring the property to a bona fide purchaser. Ann C. Howard and Robert Wenz arranged these fraudulent and fast sales at approximately half of the fair market value of the properties. All proceeds from these illegal sales have gone to Ann C. Howard, who died shortly after the discovery of her fraudulent actions, and her husband, Frank Howard, the Administrator of her estate.

The trial court found as an undisputed fact that the signature affixed to the sales contract from Ann C. Howard to Ronald D. Stegall was not signed by Mary Gustin, but rather was forged by Ann C. Howard.

The trial court awarded the property to Stegall, finding that Mary Gustin had given Ann Howard apparent authority to convey the property, and that Stegall should be awarded the property under the equitable remedy of specific performance, since he had clean hands, detrimentally had relied on the contract, and was a bona fide purchaser for value.

The trial court based its conclusion that Mary Gustin had given Ann Howard apparent authority to convey her property on the fact that 1) Ann Howard had fraudulently opened a checking account in Mary Gustin's name, and 2) that Ann Howard had fraudulently signed Mary Gustin's name to a contract to convey certain other property in 1972, and thus Mrs. Gustin knew or should have known that Mrs. Howard was acting as her agent, and thus was given apparent authority to act in regard to the property in this case.

The Court of Appeals affirmed in part and reversed in part, upholding the decision to convey the property to Stegall under the contract as stated above, but awarded Mary Gustin one-half of the proceeds of the sale based on

the joint tenancy ownership of the property by Mary Gustin and the now-deceased Ann Howard.

A question of law regarding whether a surviving joint tenant, after a contract of sale is entitled to all proceeds upon settlement was left unresolved. The reason given by the court for not deciding this question was that but for Mary Gustin's refusal to acknowledge the validity of the sales contract, the deed would have been delivered within Mrs. Howard's lifetime, and thus the proceeds would have been held in common.

It is this rationale which acted to deny Mrs. Gustin her property in violation of her due process rights under the Fourteenth Amendment, and the court's upholding of the trial court's erroneous award of the property to Mr. Stegall under the doctrine of specific performance upon which we base appeal for writ of certiorari.

REASONS FOR GRANTING THE WRIT

Because Petitioner refused to abide by the terms of what she knew to be an incomplete, fraudulently signed, and illegal contract she is being penalized by the Court of Appeals for exercising her rights guaranteed under the Constitution of the United States, Amendment XIV, Section 1:

> No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; *nor shall any state deprive any person of life, liberty, or property, without due process of law;* nor deny to any person within its jurisdiction the equal protection of the laws.

The Court of Appeals refused to decide a very important issue of law that should have been decided in favor of Petitioner based on the decisions of the great majority of the courts who have passed on this particular issue. The reason given by the Court of Appeals for not deciding this

issue is because of Petitioner's refusal to acknowledge the validity of this sales contract. The Court of Appeals states:

> Had it not been for this refusal, delivery of the deed would have occurred in the lifetime of her mother, Mrs. Howard. *Infra* p. 13a.

The death of Ann C. Howard by natural causes was an act of God. For the Appeals Court to assert that Petitioner should have meekly accepted what she knew to be a criminal act committed against her and her son's pecuniary interests is opposed to basic guaranteed rights. To be penalized for insisting on having a disputed matter litigated by a court of law places a "chilling effect" on one's rights guaranteed by Amendment XIV, Section 1 of the Constitution.

The point of law that this Court did not decide is the issue of whether, under a joint tenancy with the right of survivorship between the parties, if one joint tenant enters into an executory agreement offering to sell his portion of the realty and dies before the severance, who should receive the purchase money realized from the subsequent conveyance, the surviving joint tenant or the heirs of the deceased joint tenant's estate.

In the Illinois Supreme Court case, *Watson* v. *Watson*, 5 Ill.2d 526, 126 N.E.2d 220 (1955), the court decided that "joint tenants who entered into a contract to sell property conditioned upon certain payments to be made by the buyer, the doctrine of equitable conversion has no application to divest the surviving joint tenant of her rights, as survivor, to the proceeds paid under the contract."

Although this Court has not decided the question of whether the rights of survivorship between joint tenants are extinguished by the execution of a false contract many jurisdictions have decided the question and each has ruled in favor of the surviving joint tenant.

The United States Court of Appeals for the District of Columbia Circuit in the case *Cobb* v. *Gilmer*, 365 F.2d 931 (1966), dealt specifically with the issue of a joint tenant's rights in survivorship. Chief Judge Bazelon concluded that

> the universal rule in this country is that a pending suit for a partition of a joint tenancy does not survive the death of one of the tenants. This rule is compelled by two related concepts: first, the theory of survivorship, that at the moment of death title to the property rests exclusively in the surviving joint tenant; and second, the doctrine that severance of the joint tenancy does not occur until the suit for partition reaches final judgment. Therefore, unless partition has been decreed before the death of the joint tenant, no interest in the property remains in the representatives of the decedent which can support an action for partition. Moreover, if the ability to demand partition survived the death of a joint tenant, his representative could always bring an action for partition, thereby destroying the concept of survivorship which is the essence of the tenancy.

The Pennsylvania Superior Court held in the case *Sheridan* v. *Lucey*, 395 Pa. 306, 149 A.2d 444 (1959), that "the commencement of an action of partition does not work a severance of a joint tenancy with the right of survivorship into a tenancy in common. Where a person who is a joint tenant with right of survivorship institutes an action to partition the property and thereafter dies before judgment has been entered by the court, the surviving joint tenant becomes sole owner of the property." The Court of Appeals ignored every principle of a joint tenancy in survivorship by first ordering that the sales contract be specifically enforced (which is tantamount to partition *after* the death of a joint tenant) and then acting consistent with this decision by ordering that the estate share the proceeds of the sale. This is contrary to all of the established law regarding a joint tenancy and has created an ongoing hardship on the Petitioner and her son.

In the case *Ellison* v. *Murphy*, 128 Misc. 471, 219 N.Y.S. 667 (1927), J. Rhodes concluded in this New York Supreme Court decision the following:

> The complaint demanded, not only a partition of the property, but an accounting by the defendant, alleging that said defendant had received rents and income from the property. The interest of the parties, being that of joint tenancy, could have been severed by conveyance by either party of his interest or by a judgment of partition. Until such severance the rights of the parties remained unchanged, including the right of survivorship. Had the plaintiff placed his interest in the hands of a real estate broker for sale, clearly this would not have amounted to a severance, until he had actually conveyed such interest. The commencement of the action in partition did not accomplish a severance of the interests of the parties, and, one of the joint tenants having died before such severance, the entire title upon his death is vested in the survivor.

The Supreme Court of Iowa dealt with the problem of severance in the case *Fleming* v. *Fleming*, 194 Iowa 71, 184 N.W. 296 (1919):

> While the tenants are considered as one person, and the estate joint, yet each of the tenants has a moiety interest. Or, in other words, while each joint tenant is regarded as having the whole of the estate, his interest in the estate may be put to an end or severed during his life. Each joint tenant, during his life, may dispose of his share by the usual modes of disposition, the title to the thing which is the subject of the joint tenancy remains in the survivor or survivors, free from the share or moiety of the one who dies.

The District Court of Appeals, First District, of California in the case *Dando* v. *Dando*, 99 P.2d 561 (1940) held:

> The executor of the estate of a wife, who died before trial of her action for partition of land owned by her and her husband as joint tenants, was not entitled to judgment therein, as husband became sole owner of

> entirety by survivorship on wife's death. The mere fact that one joint tenant files action in partition does not work severance of tenancy. Upon hearing the respective parties, and when it transpired that the plaintiff had died before trial, it is patent there was nothing left to partition. This is so because upon the wife's death the husband became the sole owner of the entirety by survivorship and in virtue of the original grant creating the tenancy. That was the common-law rule and it obtains in this state (California) except as modified by statute.

The Supreme Court of Kansas held in the case of *Hewett* v. *Biege*, 183 Kan. 352, 327 P.2d 872 (1958):

> When the Bieges entered into an executory contract to sell and convey the land, they were owners of the legal title to the real estate, subject to the escrow contract for the sale thereof, as joint tenants and not as tenants in common, and at the death of Pearl, the defendant, as surviving joint tenant became the sole owner of the legal title to the real estate and all rights under the escrow contract for the sale thereof.

The Supreme Court of Nebraska in the case *Stiff* v. *Stiff*, 184 Neb. 432, 168 N.W.2d 273 (1969), held that "the filing of the suit in partition does not destroy the joint tenancy; only the judgment or decree has that effect, and the death of one joint tenant leaves nothing to partition. It is the rule of this jurisdiction that a survivorship attached to a tenancy in common is indestructible except by the voluntary action of all the tenants in common to do so."

The undersigned counsel could find no cases to support the position of the heirs of the estate receiving the proceeds of the sale. Because it would be unjust and inequitable to penalize the Petitioner for exercising her rights guaranteed under the Constitution of the United States we feel this Honorable Court should decide the issue of whether the proceeds of a sale should go to the surviving joint tenant or to the decedent's estate. This

issue should be decided only on the existing facts and the Appeals Court should not have speculated on what might have happened if Ann C. Howard had lived.

The trial court reasoned that because Ann C. Howard fraudulently maintained a checking account in the name of Mary Gustin, and fraudulently signed Mary Gustin's name to a contract for purchase of real estate in 1963, Petitioner had vested her mother with apparent authority sufficient to fraudulently sign her name to a sales contract attempting to transfer the real property in issue here. That the signature on the contract in question was not Mary Gustin's was acknowledged by the trial court as follows:

> I will find as a fact—it being undisputed—that the signature of Mary Gustin on that contract is not, in fact, the genuine signature of Mary Gustin, rather that the signature was signed to that document by her mother, Ann C. Howard, and the first issue presented to this Court is whether or not, by virtue of apparent authority, estoppel, detrimental reliance or other similar equitable principles, Mary Gustin is bound by her mother having signed her signature to that contract. *Infra* p. 17a.

For the court to conclude that Petitioner had vested Ann C. Howard with apparent authority sufficient to specifically enforce this fraudulently signed contract is erroneous and contrary to the law and evidence. Ann C. Howard did not sign this contract as Petitioner's agent but instead attempted to duplicate the actual signature of Mary Gustin. The Court should have followed the established law of *Lipscomb* v. *Watrons,* 3 App. D.C. 1 (1894), in which the court held that one of two tenants in common or joint tenants possesses no authority to sell or bind the interest of his co-owner, in the absence of express authority for that purpose.

Petitioner's signature was not included, forged or otherwise, beneath the paragraph changing and contradicting

the terms of this sales contract. Specific performance will not be decreed unless the agreement sought to be enforced and all its terms are clearly proved. *Lipscomb* v. *Watrons,* 3 App. D.C. 1 (1894). The court erred when it ruled that this fraudulently signed and incomplete contract be specifically enforced.

The agency relationship between Ann C. Howard and Petitioner was specific and well-established over an extended period of time. She was authorized to collect rents, make payments to mortgages and taxes, pay utility and maintenance bills and carry on the duties of a real estate agent. It is well settled under agency law principles that the extent of implied authority is limited to acts of a like kind and that an implied power is never extended by construction beyond the obvious purpose for which it is granted. *Gregory* v. *Loose,* 19 Wash. 599, 54 P. 33 (1898).

Petitioner never ratified Ann C. Howard's past fraudulent actions and has been working constantly to undo the damage created by them. This Court has maintained that power to convey land must possess the same requisites, and observe the same solemnities, as are necessary in a deed directly conveying the lands. *Clark* v. *Graham,* 19 U.S. 577 (1821). A title to lands can only be acquired and lost according to the laws of the state in which they are situated. An agent cannot bind his principal by deed, unless he has authority by deed to do so. The only exception to the rule that the authority to execute a deed must be by deed, is where the agent or attorney affixes the seal of the principal in his presence and by his direction. *Clark* v. *Graham,* 19 U.S. 577 (1821).

The power to sell real property within the District of Columbia is controlled by *District of Columbia Code Annot.* § 45-401 as follows:

> No Deeds of conveyance of either real or personal estate by individuals shall be executed or acknowledged by attorney.

The Court of Appeals erred when it failed to give notice to or acknowledge a decision of this Court exactly in point as well as circumventing this provision of the District of Columbia Code.

Robert Wenz, the District of Columbia professional real estate agent who joined with Ann C. Howard and her husband Frank Howard to fraudulently sign sales contracts and deeds to properties owned legally by Mary Gustin and beneficially by Paul Gustin, knew, or should have known that a fraudulently signed contract or deed was a violation of the law of the District of Columbia. The testimony of Mr. Wenz in the trial court that he allowed Ann C. Howard to fraudulently sign the name of Petitioner to these documents was based on a conversation that allegedly took place four or five years previous to the fraudulent signings. Mr. Wenz testified that he was then working as a sales agent for the Beau Bogan Realty Company and was told by Petitioner that Ann C. Howard had the power to handle all of her dealings. Petitioner has denied ever having seen Mr. Wenz until the day of Ann C. Howard's funeral. These denials were made under oath while testifying in the trial court and sworn to by Affidavit before District of Columbia Notary Publics. Based on this alleged conversation, Mr. Wenz saw fit to be a part of four fraudulently signed documents conveying or attempting to convey property belonging to Petitioner and her son.

Petitioner lived within a fifteen (15) minute drive of Ann C. Howard and Mr. Wenz could easily have had her sign her own signature if he honestly thought she desired to sell them. Petitioner's name was listed in the Oxon Hill, Maryland telephone directory and Mr. Wenz, at the very least, should have called Petitioner to reassure himself after a four or five year period that Petitioner still desired to have Ann C. Howard "handle all of her affairs" before allowing hundreds of thousands of dollars to be fraudulently transferred. It is much more likely that Robert

Wenz never for a moment thought Petitioner would be willing to sell her property (especially at a price that was approximately half the fair market value) and that he acted in consort with his friend Frank Howard and Ann C. Howard to perpetrate this fraud.

It was unreasonable for the trial court to believe that a professional real estate agent would chose not to have authentic signatures affixed to sales contracts (and deeds) when it would have been so easy to arrange because of the close proximity of all of the parties. It should also be noted that Mr. Wenz never mentioned the fact that the signatures of "Mary Gustin" had in fact been fraudulently signed by Ann C. Howard to the purchasers of the properties.

An exercise of this Court's power of supervision is called for because the Court of Appeals has refused to consider the established law of this Court and the statutory provisions of the District of Columbia Code.

When the Court of Appeals refused to decide the issue of whether the proceeds from the sale of real property held in joint tenancy with right of survival, because Petitioner refused to honor what was in fact a fraudulently signed and incomplete contract, the court penalized Petitioner for exercising rights guaranteed by the Constitution of the United States.

By refusing to decide this issue, the Court of Appeals has actually made a decision which has caused the loss of Petitioner's (and her son's) interest in this unique real property.

Although this issue has not been considered by either this Court or the Court of Appeals, the "silent order" of the Court of Appeals has been made contrary to the established law of every jurisdiction ruling on the matter.

The Court of Appeals arrived at their decision by completely ignoring this Court's decision in *Clark* v. *Graham,*

19 U.S. 577 (1821), *supra* p. 11 of this brief, and unjustifiably circumventing the *District of Columbia Code Statute 45-401, supra* p. 11 of this brief.

After ignoring or circumventing all applicable law the Court of Appeals upheld a decision enforcing a fraudulently signed and incomplete contract.

This inequitable decision is now having repercussions in other courts relating to this and other fraudulent transactions perpetrated by the same parties to the great detriment of the Petitioner and her son. I quote from page 5 of the *Answer* filed by defendant in the *Gustin* v. *Hash* case, Civil Action No. 75-1814 now before the United States District Court for the District of Columbia. Ann C. Howard actually signed the name of Mary Gustin, sole record owner of the real property involved, to a deed purporting to transfer the property to an innocent purchaser.

> Plaintiff is estopped by the judgment in *Gustin* v. *Stegall,* Appeal No. 9161, in the District of Columbia Court of Appeals and by Findings of Facts and Conclusions of Law of Judge Newman in *Stegall* v. *Howard,* Civil Action No. 1418-75-RP in the Superior Court of the District of Columbia from denying that she authorized her mother, Ann C. Howard, to act for her as agent in the execution of legal papers pertaining to real property and the receipt of funds therefor.

It is essential that this Court exercise its power of supervision to halt this continuing saga of inequity and help bring justice to the Petitioner and her handicapped son. By so doing, this Court will finalize an issue of law that has not been heretofore decided beyond the State level, it will undo the violation to the Petitioner's United States Constitutional rights, it will acknowledge the law established by this Court in direct point to this case previously ignored by the Court of Appeals and the statutory law of the District of Columbia unjustifiably circumvented by the Court of Appeals, and it will fulfill the Congressional in-

tent of the 85th Congress that Paul Gustin have a supply of funds to endure the continuing hardships inflicted on him by the United States Government.

CONCLUSION

It is respectfully submitted that for the foregoing reasons this petition for a writ of certiorari should be granted to review the judgment of the District of Columbia Court of Appeals.

Respectfully submitted,

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APPENDIX

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 9161

MARY ANN GUSTIN, APPELLANT,

v.

RONALD D. STEGALL and FRANK HOWARD,
Administrator, Estate of Ann C. Howard,
APPELLEES.

Appeal from the Superior Court of the
District of Columbia

(Argued June 18, 1975 Decided November 11, 1975)

Elaine C. Major for appellant. *D. Heywood Hardy* was on the brief for appellant.

Peter R. Kolker for appellee Stegall.

Harry W. Goldberg for appellee Howard. *Nathan Rubey* also entered an appearance for appellee Howard.

Before REILLY, Chief Judge, and KELLY and HARRIS, Associate Judges.

REILLY, *Chief Judge*: Challenged on this appeal is a judgment in favor of a purchaser for specific performance of a contract to sell a parcel of real property at 712 East Capitol Street, N.E., for the sum of $125,000. On its face the contract shows what purported to be the

signatures of the purchaser (dated December 7, 1973), and the sellers, Mary A. Gustin and Ann C. Howard (dated January 3, 1974), who held title as "joint tenants with rights of survivorship."

Prior to the settlement date ("on or before May 1, 1974"), when the joint tenants were obligated to convey a warranty deed and the purchaser to make a cash payment of $18,000 and execute notes and security instruments for the balance, the latter learned through the designated real estate broker that the joint tenants were contracting through another broker for the sale of the property to a different person. Thereupon the purchaser brought suit for specific performance. This suit, filed on February 19, 1974, named the two joint tenants as defendants. The complaint also sought preliminary injunctive relief (subsequently granted before trial) against the defendants' conveying the property to any third party until plaintiff's rights had been adjudicated.

Soon after filing suit, the plaintiff-purchaser discovered that one of the joint tenants, Mrs. Gustin, had not actually signed the contract, her apparent signature having been written on the instrument by Mrs. Howard, the other joint tenant.[1] Plaintiff thereupon moved to amend his complaint by adding to it a "Count II" charging the codefendants with fraud and asking as an alternative for the relief previously requested an award of punitive damages. The motion was granted.

The judgment rendered at the subsequent trial turned largely on the question—a mixed issue of law and fact—of whether one codefendant had authorized the other to affix her signature to the contract. In answering this question in the affirmative, the trial court reached its

[1] This information was elicited by the answers to an interrogatory served on defendant Howard.

conclusion by resolving conflicting testimony not only with respect to the events which preceded the signing of the contract, but the underlying facts concerning origin of the joint tenancy prior to the sale negotiations. Before reaching the legal issues presented to us on appeal, a brief statement of the undisputed facts seems appropriate.

The joint tenants were mother (Mrs. Howard) and daughter (Mrs. Gustin). For some time prior to 1960, the East Capitol Street property was owned by Carlton Von Emon and occupied by the mother, who operated it as a rooming house pursuant to an understanding with the owner requiring payments from time to time and eventual purchase of the property by her. In 1960, Von Emon and his wife conveyed the property to Mrs. Gustin and her brother, Paul W. Herman. It is undisputed that (1) the titling of the property in this manner was arranged by the mother; (2) the daughter, Mrs. Gustin, advanced at least $5,000;[2] (3) the son, Herman, advanced or paid nothing; and (4) the mother and her second husband, Frank Howard, continued to reside there and rent rooms to lodgers. In 1967, the owners of record conveyed the property to a straw, who immediately executed a deed to Mrs. Howard and Mrs. Gustin as joint tenants with rights of survivorship. Thus, when plaintiff sought to buy the property through the real estate agent with whom it had been listed for sale he assumed that his offer had to be accepted by both joint tenants.

In the course of pretrial discovery, plaintiff on April 30, 1974, took a deposition from the mother (Mrs. Howard), the transcript of which has been certified to this

[2] This was the figure stated by the mother in a deposition taken April 30, 1974. The deponent called this advance a loan, and the trial court accepted her version of the transaction.

court on appeal. While the deponent was extremely vague about dates, the burden of her testimony was that she and not the codefendant (her daughter, Mrs. Gustin) was the real owner of the property, that when she bought the place from the Von Emons she had directed that the conveyance would name her daughter and son as grantees because a cancer operation indicated she had not long to live, and that in 1967, her son Paul, recently married, told his mother that he wished to relinquish his part of the title; whereupon she arranged for the successive conveyances which made her and Mrs. Gustin the owners of record as joint tenants.

With respect to the contract of sale to the plaintiff she testified that there was nothing unusual about her placing her daughter's seeming signature upon the agreement because over a 20-year period, with her daughter's knowledge and consent, she had been signing her name to various instruments involved in real estate and other financial transactions. Less than two months later (June 25, 1974), the mother died intestate and her husband, Frank Howard, administrator of her estate, was substituted as a codefendant.

At the two-day trial of the case a few months afterward, the codefendants, represented by separate counsel, took opposing positions. The daughter testified that the consideration for the original purchase of the rooming house was money which she had taken from funds belonging to one of her children—a crippled son, Paul Gustin, and that he was the beneficial owner of the property.[3] She emphatically denied any knowledge or partici-

[3] Appellant's brief states that shortly before this transaction, Congress passed a private bill awarding $16,000 to Paul Gustin, then a minor, as compensation for injuries incurred in a government hospital. This sum was placed in a

pation in the negotiations which culminated in the contract of sale to the purchaser, said that she had never authorized or ratified her signature being placed on such contract, and that in other unrelated transactions the affixing of her signature by the mother to commercial instruments and deeds had been done without her consent, and in defiance of repeated warnings to her mother to desist from such "forgeries". This testimony was contradicted by other witnesses, including her stepfather, the codefendant, who testified that she had been consulted with respect to the plaintiff's offer of purchase. She had insisted only upon a purchase price of not less than $100,000 according to one of the corroborating witnesses.

The case was tried without a jury. After hearing all the testimony and considering the exhibits, the trial judge entered judgment in favor of the plaintiff but three days later provided the parties with written findings of fact and conclusions of law. As none of the parties to the appeal designated the transcript of the trial testimony as part of the record, this court accepts what summaries of the testimony that document contains as accurate. We see nothing in those findings or in the exhibits certified as part of the record,[4] which gives any support to appellant's contentions that (a) her trial counsel's preparation and presentation was inadequate, and (b) the trial judge was prejudiced against her. Thus the only remaining issues for consideration are whether any of the

guardianship account in the Orphan's Court of Maryland with his mother (Mary Ann Gustin) and father, now deceased, designated as guardians.

[4] These exhibits include the challenged sales contract and a transcript of the pretrial deposition of the codefendant, Mrs. Howard—properly admitted at the trial because the deponent had died.

findings and conclusions of the trial court amounted to substantial error.

The court, disbelieving appellant Gustin's testimony in which she asserted that she had never given her consent to the sale of the East Capitol Street property to the plaintiff, held that on the basis of testimony it found credible, she was aware of the general terms of the proposed sale and did not voice an objection to the contract until suit to enforce it was begun. Pointing to a checking account maintained by the mother in the daughter's name—but in which the mother drew the checks—and two other real estate transactions involving joint property, where the mother executed the signatures of both joint tenants, the court found that the daughter was fully cognizant of this practice. It concluded that in those instances as well as in the challenged contract of sale the mother was vested with authority by Mrs. Gustin to place her signature on the requisite instruments, and that the plaintiff, having made expenditures prior to the settlement date in the expectation of moving into the property, was entitled to specific performance.[5]

In our opinion this conclusion, based as it was on the resolution of conflicting testimony, was not legally erroneous. Appellant argues, however, that a provision of

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[5] The court characterized the dealings between mother and daughter as giving the mother "apparent authority" to put the latter's signature on the questioned document. Reference to the term "general" authority would perhaps have been more accurate, as the findings do not reveal that the daughter ever communicated with the purchaser or his agents. But whatever terminology it used, it is clear that the trial court meant that under the law of agency, Mrs. Gustin could not disavow the contract in the context of his factual determination.

our code[6] denies even a written power of attorney sufficiency to pass title to real estate. This section, D.C. Code 1973, § 45-401, refers only to deeds of conveyance, and not to contracts to convey. Although the latter are subject to the Statute of Frauds [incorporated into our code as § 28-3502], which limits the enforcibility of certain agreements to those "signed by the party to be charged therewith or a person authorized by him", it has been held that a contract of sale of realty signed by the broker but not the owner-vendor is valid where the broker had been authorized to sell on general terms outlined as acceptable by his principal. *Ochs v. Weil*, 79 U.S.App. D.C. 84, 142 F.2d 758 (1944). Moreover, under circumstances not dissimilar from those disclosed in this record, we have decided that a joint tenant is estopped from invoking the Statute of Frauds to repudiate an oral agreement. *Brown v. Brown*, D.C.App., 343 A.2d 59 (1975). *See also Schanck v. Jones*, 97 U.S.App.D.C. 148, 229 F.2d 31 (1956); *Brewood v. Cook*, 92 U.S.App.D.C. 386, 207 F.2d 439 (1953).

Accordingly, we affirm the court's holding with respect to the right of the plaintiff and that portion of its order requiring a conveyance to him in fee simple of the entire property described in the contract—not merely the moiety vested in the joint tenant whose actual signature is undisputed.[7]

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[6] § 45-401. Acknowledgment by attorney.

No deeds of conveyance of either real or personal estate by individuals shall be executed or acknowledged by attorney.

[7] Cases holding that a contract to sell by one joint tenant severs the jointure, thereby placing the purchaser in the position of a tenant in common with the noncontracting party, are not pertinent here because the second joint tenant was actually a party to the sale.

We have difficulty, however, with the trial court's findings and conclusions with respect to the legal and equitable title on the day the contract was executed. On the stand, Mrs. Gustin said that the money for the original purchase of the property was taken from her son Paul's trust account with an understanding by her mother that the joint grantees would hold it in trust for Paul, permitting the mother to use the premises for her lodging house business. If her testimony was truthful, beneficial title was in Paul. The trial court refused to believe her—in part because none of the guardianship accounts filed reported this transaction—but more importantly because it credited her mother's version, who had deposed that while Mrs. Gustin had lent her $5,000 at the time of the settlement with Von Emon, the deponent had made the payments to the grantor and was the real owner. The court accepted deponent's explanation of the reason that Mrs. Gustin was named a joint tenant in both the conveyance from Von Emon and the subsequent reconveyance from the straw, *viz*, that this was done on the mother's instructions because she was suffering from cancer. The court characterized this as a matter of estate planning and concluded that beneficial title to the entire property reposed in the mother, Mrs. Howard, from the time of the execution of the Von Emon deed to the date of the contract of sale, and that "by the principle of equitable conversion [her] interest in the property converted to personalty upon [her] death."

In its remedial decree, the court ordered the administrator of the mother's estate to execute a deed conveying all right, title, and interest in the property to the plaintiff.

Insofar as these conclusions rest on findings of fact, which in turn were arrived at by resolving conflicting testimony between mother and daughter, this court deems

itself bound by such findings. Thus it was within the province of the trier of fact to reject Mrs. Gustin's account of the first transaction, thereby eliminating from the case the claim she put forth in behalf of Paul Gustin.[8] But it does not follow from even the findings based on the Howard deposition (which we have read) that the court was correct in concluding that as a matter of law beneficial title at all times was vested in Mrs. Howard.

It is true, of course, that as a general rule a resulting trust arises in favor of the one paying for a conveyance which transfers title to another.[9] This is only a presumption, however, and numerous authorities have held that this rule does not apply to a purchase by a parent in the name of a child (or children), which, according to the trial court was what Mrs. Howard accomplished when Von Emon was instructed to deed the property to her son and daughter.[10] Under such circumstances, in the absence of evidence of a contrary intent,[11] the courts have construed the conveyance as an advancement, settlement, or gift. It is clear from deponent's own testimony that she intended a gift of a future interest to the grantees. It is also apparent that when the title was later conveyed to a straw and reconveyed to Mrs. Gustin and herself as joint tenants with right of survivorship, it

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[8] Thus, we are compelled to affirm a provision in the order of the court requiring the Recorder of Deeds to expunge from its records a certain "Deed of Correction" executed by appellant in Paul's favor during the pendency of this litigation in the trial court.

[9] *McGean v. McGean*, D.C.App., 339 A.2d 384, 388 (1975); *Leeks v. Leeks*, D.C.App., 316 A.2d 859 (1974).

[10] *See McGean v. McGean, supra* n.9, and cases cited in 89 C.J.S. *Trusts* § 129b. (1955).

[11] Such evidence was produced in *Leeks v. Leeks, supra* n.9.

was contemplated that Mrs. Gustin would be the sole heir to the property unless she predeceased her mother. The trial judge called this a matter of estate planning without explaining that the legal effect of such an instrument was to keep the property out of the general assets of the estate of whichever joint tenant died first, which must have been what the parties contemplated.

Thus, in the absence of any attempt on Mrs. Howard's part to revoke the gift, the finding that she was vested at all times with sole beneficial title cannot be sustained. In fact, the subsequent conduct of the mother in the sale negotiations, particularly her use of both names in the telegram of confirmation and the wording of the contract later executed, negates any inference of reassertion of sole equitable rights. Moreover, the observations about the proposed price and a purchase money mortgage attributed to Mrs. Gustin by the witnesses whom the court credited reveals that both she and the participants in the family conferences recognized that she had a financial stake in the terms and conditions of any sale ultimately agreed upon.

The contract on its face refers to the joint tenants in the singular as the "Seller", and provides for such "Seller" taking back from the "Purchaser" a second deed of trust to secure payment of $78,000, and a third, to secure the balance of deferred purchase money. There is no provision in the instrument to indicate that the notes in connection with these obligations should be drawn only in Mrs. Howard's favor or that the projected cash payment of $18,000 on the date of the conveyance was to be made only to her. Thus under the terms of the instrument itself both joint tenants were entitled to the proceeds—a point that counsel for the purchaser conceded at oral argument.

In adverting to the principle of equitable conversion from realty to personalty, the trial judge was presumably referring to a doctrine developed by the chancery courts in the early history of English land law, which views a contract of sale as immediately vesting the purchaser with beneficial ownership of the realty, and limiting the property interest of the vendor to the promised consideration (*i.e.*, personalty)—retaining legal title only as trustee for the purchaser until the deed of conveyance is delivered. But this principle came into play—if at all—on the date the challenged contract here was executed, not on Mrs. Howard's death, which occurred a few months later. In jurisdictions which distinguish between devolution of real and personal property, it has been held that if a contract vendor of real estate dies before the settlement date, the purchase money realized from the subsequent conveyance goes not to his heirs, but to the administrator of the decedent's personal estate. When this was the law of the District, the courts here applied this rule. In *Liberty National Bank of Washington v. Smoot*, 135 F. Supp. 654 (D.D.C. 1956), the court, in passing on a question of whether a testator's fractional interest in a piece of property which he had agreed to sell, was realty or personalty, stated:

> The District of Columbia follows the general rule that a contract of sale of land effects an equitable conversion of it into personalty, and if the vendor dies before the performance of the contract, his rights in it descend to his personal representative. Griffith v. Stewart, 21 App.D.C. 29. . . .

Whether the ordinary principles of equitable conversion are applicable when the land to be conveyed is held in joint tenancy is a question on which the authorities

are divided. No appellate court in this jurisdiction seems to have addressed itself to this precise question. Several courts have framed the issue in terms of termination of joint tenancies: whether a contract to convey executed by all joint tenants severs or terminates a joint tenancy. If the signing of the contract is tantamount to severance or termination, the contract rights are held in common, with no right of survivorship.[12] But if it does not have this effect, then of course there is a right of survivorship in the contract rights. Some courts view the issue as turning on equitable conversion, with at least one jurisdiction holding outright that such conversion simply does not apply to joint tenancies and hence a surviving wife, who joined in a contract of sale with a husband who died before the settlement date, was entitled to all the proceeds to the exclusion of the husband's estate.[13] The same result has been reached in other states where one of the joint tenants died prior to the delivery of the deed, sometimes on the ground that the change of form through

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[12] This is the rule in Maryland. *Register of Wills for Montgomery County v. Madine*, 219 A.2d 245 (Md. 1966). *Accord, In Re Baker's Estate*, 78 N.W.2d 863 (Ia. 1956) (a tenancy by the entirety, with husband dying prior to execution of conveyance); *Buford v. Dahlke*, 62 N.W.2d 252 (Neb. 1954); *Konecky v. von Gunten*, 379 P.2d 158 (Colo. 1963); *Panushka v. Panushka*, 349 P.2d 450 (Ore. 1960).

[13] *Watson v. Watson*, 126 N.E.2d 220 (Ill. 1955). The court remarked:

> The facts here indicate that joint tenants entered into a contract to sell property conditioned upon certain payments to be made by the buyer. The doctrine of equitable conversion would have no application on these facts to divest the surviving joint tenant of her rights, as survivor, to the proceeds to be paid under the contract. [126 N.E.2d at 224.]

equitable conversion does not automatically destroy the nature of the interest.[14]

But irrespective of what analysis was made of the equitable conversion problem, the basic question in all these cases was whether the surviving joint tenant, after a contract of sale, is entitled to all the contract proceeds when settlement occurs. None of them even hint at the possibility that the decedent's estate—assuming a genuine joint tenancy which we have found to exist here—takes, to the exclusion of the surviving joint tenant.

As we have previously observed, no court in this jurisdiction seems to have decided the narrow question of whether the right of survivorship between joint tenants is extinguished by the execution of a sales contract, although there are cases holding that the proceeds of a sale by tenants by the entirety, if still in a special fund or in escrow at the date of one spouse's death, cannot be reached by creditors of the decedent. *Held v. McNett*, D.C.Mun.App., 154 A.2d 349 (1959). *See also In Re Estate of Wall*, 142 U.S.App.D.C. 187, 440 F.2d 215 (1971) and *Prather v. Hill*, D.C.App., 250 A.2d 690 (1969).

Because of one aspect of this case, however, we are not called upon to decide this question. We refer to Mrs. Gustin's refusal to acknowledge the validity of the sales contract. Had it not been for this refusal, delivery of the deed would have occurred in the lifetime of her mother, Mrs. Howard. Under these circumstances, in the absence of any evidence of an agreement to hold the proceeds jointly, the purchase money and the interest in the grantee's notes for the balance would have been held

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[14] *In Re Estate of Rickner*, 518 P.2d 1160 (Mont. 1974). *See also In Re Maguire's Estate*, 296 N.Y.S. 528 (App.Div. 1937), *aff'd without opinion*, 277 N.Y. 527, 13 N.E.2d 458 (1938); *Hewitt v. Beige*, 327 P.2d 872 (1958).

in common, *Secrist v. Secrist*, 132 N.Y.S.2d 412 (App. Div. 1954), *aff'd*, 125 N.E.2d 107 (1955), because in this jurisdiction, as in New York, there is a presumption against joint tenancies unless expressly declared. D.C. Code 1973, § 45-816. Accordingly, the order of the trial court should be revised to require execution of a conveyance by Mrs. Gustin as well as the administrator of the Howard estate, each being entitled to an equal share of the consideration upon delivery to the purchaser, with any prior advances by Mrs. Gustin or any unreimbursed payments for taxes, maintenance, or other incidentals by the Administrator, to be equally apportioned between the grantors.

Affirmed in part; Reversed in part; and Remanded for such modification of the Order as is consistent with this opinion.

Exhibit #8

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

CIVIL ACTION No. CA 1418-74

RONALD D. STEGALL

v.

ANN C. HOWARD and MARY ANN GUSTIN, *Defendants.*

Washington, D.C.

Monday, November 18, 1974
Tuesday, November 19, 1974

The above-entitled action came on for a trial before the Honorable THEODORE R. NEWMAN, Associate Judge, in Courtroom Number G-143, commencing at approximately 9:50 a.m.

This Transcript Represents the Product of an Official Reporter, Engaged By The Court, Who Has Personally certified That It Represents Her Original Notes and Records of Testimony and Proceedings of the Case as Recorded.

APPEARANCES:

On behalf of the Plaintiff:

PETER KOLKER, Esquire
Washington, D. C.

On behalf of the Defendant,
Ann C. Howard:

HARRY GOLDBERG, Esquire
NATHAN RUBEY, Esquire
Washington, D. C.

On behalf of the Defendant,
Mary Ann Gustin:

JOSEPH RAFFERTY, Esquire
D. HEYWOOD HARDY, Esquire
Washington, D. C.

[6] THE COURT: I will commence, if you will pardon me, by personal reference. It is unfortunately often my responsibility, since I am fiduciary judge and have been since that jurisdiction has been in this court, to preside over family imbroglios. Occasionally, it is my misfortune on the civil side of the court to preside in proceedings that involve similar family imbroglios. It is never pleasant. It is, indeed, distressing. It is, indeed, distressing to see families rent asunder.

However, when I took this job—and nobody drafted [7] me for it—when I took this job nobody told me it was going to be easy, and, thus, often it has been my responsibility to step into family imbroglios and to apply the rule of law thereto, keeping in mind that fundamentally what the rule of law is all about is justice but that justice can only be obtained under a rule of law. With that by way of preface, let us turn to the issues of this case.

There are some things in this matter that are undisputed. It is undisputed that circa 1955 Ann Howard purchased a rooming house business at 712 East Capitol Street in the District of Columbia. It is undisputed that in 1960 the premises in which that rooming house was being operated were sold to certain grantees; that the grantees of record in that conveyance—from Carlton G. Van Emon and Florence White, Van Emon, his wife—that the grantees in the conveyance were Mary Ann Gustin and Paul Walter Herman, sister and brother, both the Children of Ann C. Howard. And that's about all this is undisputed in this case.

There are certain evidentiary facts that are undisputed, but that's about all that is undisputed other than that in 1967 Gustin and Herman joined in a conveyance to a straw who deeded back to Gustin and Howard.

Now, the Court will find as a fact—and I will suggest to whatever counsel ends up preparing the findings of facts and conclusions of law, no matter who that counsel [8] may

be, that he may desire to get a transcript of my remarks here to assist in that preparation. I will find as a fact that on or about February 11, 1973, Ronald D. Stegall submitted an offer to purchase subject real estate, being 712 East Capitol Street, Northeast, in the District of Columbia, at and for a purchase price of $90,000. That offer was submitted through Robert Wenz Real Estate, Inc. acting through Robert Wenz, real estate broker. I will find as a fact that sometime prior to February 11, 1973, Ann C. Howard had given to Mr. Wenz a listing authorizing him to act as her agent in seeking a purchaser for that property; that Mr. Wenz obtained the offer from Mr. Stegall. I will find as a fact that that offer was submitted to Mr. Howard and that a series of negotiations thereafter took place, concluding in certain counter offers, all of which are evidenced on Plaintiff's Exhibit No. 1 in evidence, the February 11, 1973 document. There are one or two counter offers on the second sheet of the photocopy of it that is in evidence.

I will find as a fact that Ann C. Howard dispatched a telegram from Saint Petersburg, Florida to Mr. Wenz, her agent, accepting the offer that ultimately had been communicated as that offer on—that counter offer to her counter offer on Plaintiff's No. 1.

However, subsequent thereto the parties agreed to modify and change those conditions and terms, and that the [9] terms finally agreed on are as set forth in Plaintiff's Exhibit No. 3, bearing the signature of Ronald D. Stegall of January 4, 1974.

I will find as a fact—it being undisputed—that the signature of Mary Gustin on that contract is not, in fact, the genuine signature of Mary Gustin, rather that that signature was signed to that document by her mother, Ann C. Howard, and the first issue presented to this Court is whether or not, by virtue of apparent authority, estoppel, detrimental reliance or various other similar equitable principles, Mary Gustin is bound by her mother having signed her signature

to that contract. Let's examine the evidence with respect thereto and make appropriate findings of fact.

The Court will find as a fact that for most of the last twenty years Ann C. Howard, as a matter of customary routine practice, signed the signature of Mary Gustin on various forms of documents. These documents, as shown by the evidence, and I find as a fact, constitute—consist of checks on the American Security and Trust Company, signed Mary C. Gustin, and that signature is apparently signed by her mother, Ann C. Howard.

Those checks on the American Security and Trust Company are for various and sundry purposes; some pertaining to the real estate at 712 East Capitol; some for personal expenditures; some for expenditures with respect to other [10] properties. Indeed, I think I saw at least one with respect to 701 East Capitol in the series of checks.

The checks, which have been introduced into evidence as Defendant's Howard's number three, span a period of time from at least 1963 through 1972. Indeed, they go back as early as 1961, just flipping through them, and as recently as 1973. I think there is one in here by error, because it's on a Maryland bank and bears what to the naked eye appears to be the genuine signature of Mary Gustin.

But these checks span a twelve to thirteen year period for various and sundry purposes and show that, as does the testimony of Mr. Banning, that it was a common practice of Ann C. Howard to operate her expenditures out of a checking account in the name of Mary Gustin, which apparently she, Ann C. Howard, had opened for Mary Gustin and deposited monies thereto and disbursed monies therefrom; that that was a pattern and practice, as I say, as also testified to by Mr. Banning, whose testimony I find to be, in all respects, credible and worthy of belief.

Indeed, depending on which day of Mrs. Gustin's testimony one wants to credit, whether it be her testimony of

yesterday or her testimony of today, she was fully aware for quite sometime that her mother was operating bank accounts in this fashion, for she testified yesterday that she repeatedly over the years protested to her mother about that and sought [11] to stop her mother from doing it, testimony that I find most interesting in light of her testimony today that the first time she ever learned about this account at American Security and Trust was after the death of her mother.

Not only do we have evidence that her mother operated out of bank accounts signing the name of Mary C. Gustin, Mrs. Gustin has testified that she signature on Plaintiff's Exhibit No. 9, a contract for the sale of real estate dated January 14, 1963, relating to 211 Sixth Street, Northeast, in the District of Columbia, which purports to bear the signature of Mary Gustin, is not, in fact, the signature of Mary Gustin, and it does not appear to be the signature of Mary Gustin, and I will find as a fact that it is not the signature of Mary Gustin. Indeed, it looks to the naked eye in all respects as if it were signed by the same person who signed the contract that is here in question and all of the checks which are Defendant Howard Exhibit No. 3, all of which I have had testimony are in the handwriting of Ann C. Howard; so I will find as a fact that the signature of Mary Gustin on Plaintiff's No. 9, the contract for 211 Sixth Street, Northeast, was, in fact, signed by Ann C. Howard.

In spite of that, Mrs. Gustin testifies that she paid a substantial part of the purchase price of that property while she was on actual or at least constructive notice that her mother was signing contracts purporting to obligate her [12] to purchase real estate, and, indeed, if her testimony is given its normal inferences and implications, when she says the deposit I will judicially note a matter of common knowledge in the real estate business that deposits accompany offers prior to the time they are accepted by the seller, and, consequently, if, in fact, Mary Gustin paid the deposit she

must have been aware, prior to the time of the acceptance of the offer by the purchaser, that her mother either was proceeding alone or was proceeding in both their interests and had, thus, probably signed her name to a contract.

It is inherently incredible to me that a person would continue to dispense monies, whether personally owned monies or fiduciary monies, to acquire interest in real estate with no more interest or concern as to the supporting documentation than Mrs. Gustin testified she had. I will find as a fact, as I say, that Mrs. Gustin knew, or by the exercise of reasonable diligence should have known, that her mother, Ann Howard, had signed her name to a contract for the purchase of real estate, 211 Sixth Street, Northeast, in the District of Columbia, as early as January 14, 1963, and by thereafter dealing with that real estate, as the uncontradicted evidence is that Mary Gustin did, she ratified in full the act of her mother in so signing that contract.

She was on notice that her mother was doing not only the signing of checks but the signing of her name to [13] contracts for the purchase of real estate.

What else does the evidence reflect? The 14 Ninth Street property. As I recall the testimony, title to that property was in the name of Mary Gustin alone. That property was subsequently sold. The deed to that property, which is not in evidence, bore a signature purporting to be that of Mary Gustin as the grantor on that deed of sale—of that deed of conveyance. That deed bore a Florida jurat by a Florida notary public.

If the testimony of Mrs. Gustin is to be believed, her mother fraudulently forged her signature on a deed of conveyance, fraudulently misrepresented herself to a notary public in the State of Florida as being, in fact, Mary Gustin, and perpetrated a fraud not only upon Mary Gustin but upon innocent purchasers of that real estate. The Court does not believe that happened.

The Court affirmatively disbelieves Mary Gustin's testimony that she did not sign that deed on the Ninth Street property. Indeed, this Court is convinced beyond a purview of a doubt that Mary Gustin did, in fact, sign a deed for the Ninth Street property, that she knew that her mother had taken all the interest in consummating that sale, that her mother thereafter dispensed the proceeds of that sale, as her mother dispensed the proceeds of sales of other pieces of real estate, as her mother testified, including repaying to [14] her daughter some sum of either $7,000 or $14,000, depending on where Mrs. Howard was testifying in her deposition.

Now, I will find as a fact that the testimony of Mr. Banning, as I say, with respect to this transaction, as well as the conversation of two to three months prior to his departure from Washington in August '73, was entirely credible; that Mary Gustin inquired of him as to the sale of that property as to whether or not it had been consummated, and when he answered he didn't know she said, I know, it has been sold. It's apparent on this record that that is so. That testimony is corroborated in some respects by the testimony of Frank Howard.

I will find as a fact that the testimony of Frank Howard with respect to the conversation at 712 East Capitol Street sometime between November '73 and December or Christmas-time '73 concerning the sale of 712 East Capitol to Stegall did, in fact, occur, as Frank Howard testified it occurred.

Thus, I will find as a fact that sometime between November '73 and Christmas '73 Mary Gustin was on actual notice that her mother was purporting to sell the fee simple interest in 712 East Capitol Street and that she never said a mumbling word to protest or disavow any authority her mother had to make that conveyance and contract of sale.

I will further find as a fact that the testimony of Robert Wenz with respect to the conversations circa '68 or [15] '69

with Ann Howard and Mary Gustin with respect to the Ninth Street property sale did, in fact, occur as Mr. Wenz testified, specifically that Mary Gustin told Robert Wenz, at a time when he was a salesman for Beau Bogan, to have all of his dealings and communicate all offers and the like to Ann Howard.

All of these facts make crystal clear to me that Mary Gustin had consciously, deliberately clothed her mother, Ann C. Howard, with apparent authority to execute contracts for the sale or purchase of real estate in the name of Mary Gustin. I will find that she never expressly authorized her mother to do that but that her conduct clothed her mother with apparent authority and a little bit more than apparent authority, for, indeed, she knew that her mother was, in fact, doing these acts, based on the series of checks, the '63 transaction with respect to the Sixth Street property, the transaction with respect to the Ninth Street property, and specifically with respect to 712 East Capitol. When on notice that her mother was purporting to contract to sell the fee, as I said, she didn't say mumbling word by way of protest. Her only concern was she ought to be able to get about a hundred thousand dollars for it.

In this case we have mother clothed with apparent authority by virtue of a course of conduct spanning a number of years by the daughter. We have persons who are innocent purchasers for value, bonefide purchasers for value, who have [16] relied, to their detriment, on that apparent authority, and I will find as a fact that this piece of real estate, as all pieces of real estate, under the doctrine of specific performance of real estate, is a unique piece, that this one is particularly unique, given the evidence that it had a fair market value of $125,000, in the 700 block of East Capitol Street, a neighborhood which, it is common knowledge, is not selling at $125,000 per house—they are selling somewhat less than that—and thus, crediting as well the testimony of Mr. Stegall about the woodwork in the house,

its antique character, its ideally being suited to his personal needs, the length of time he had been searching, trying to find just this house, the monies he expended in reliance upon his belief that he had a valid contract. I will find that there has been detrimental reliance and that thus, Mary Gustin is equitably estopped to deny the agency of her mother to sign her name to the contract.

I will further find as a fact that Ronald Stegall comes into this court with clean hands, as required in equity, and that the purchase price is a fair market value purchase price at the time the contract, i.e., January 1, 1974, Mr. Kolker, not the telegram contract, January 4, 1974, that that, at that time, was a fair market value of the property.

Having disposed of the first issue, I had thought, perhaps, that that would end the issue, but it's rather [17] apparent that it does not, for we have the problem that I'm not sure Mr. Rafferty is correct on the question of equitable estoppel. Thus, I'm going to deal with a second issue.

If, in fact, the ruling of this Court is in error with respect to the ruling I have just made—apparent authority, estoppel, detrimental reliance—the Section 90 restatement argument, as I characterize it—if, in fact, the Court is in error with respect to those findings of fact and conclusions of law, the Court makes the following findings of fact as well.

Number one, that upon the purchase of the rooming house business from the Van Emons in 1955, or from whomever it was purchased—I don't recall any testimony of the rooming house as to who the seller of the rooming house business was, so I will exclude my comment that it was purchased from Van Emons, because I'm not sure that shows in the record—but there was agreement between Van Emon and Howard whereby payments of $250 per month were to be paid.

Defendant Howard's Exhibit No. 1 does not reflect completely what Mr. Goldberg says it reflects. It does reflect, however, that in 1955, 1956, 1957, and up to and up through February of 1958, the $250 per month payments that were made—perhaps missing some months—I see some evidence, for example, that December '56 was missed—perhaps missing a month or so—those payments were credited to [18] interest, taxes and a curtailment of principal, which tends to confirm the view that there was a contract between Howard and Van Emon springing as early as 1955—apparently 8/22/1955—for the purchase of 712 East Capitol Street, and that payments were being made toward a purchase price, apparently on some arrangement such as you have in the State of Illinois, particularly Chicago, contract purchases, which are an abomination, but they are done. That practice continued through February 24, 1958, and obviously, something happened circa that time, because no payments were made from February 24, 1958 until June 2, 1958, and for reasons that do not reflect of record in these proceedings, the payments were reduced to $200 month and were credited simply to rent. No further reflection of interest, tax or principal curtailment through July of 1960.

Thus, it is clear of record that at all relevant times prior to 1960, Ann Howard was interested in and making steps to purchase 712 East Capitol, and I will find as a fact that she had paid, pursuant to this agreement with Van Emon, springing from 1955, monies toward a purchase price. I cannot make any finding as to whether or not that money was credited toward the ultimate purchase price in this case, for the record is silent on that respect. This may have been under an arrangement where, if she ceased making those payments she forfeitted the back payments, they being considered thus [19] rent. The record is barren on that point, so I can't make any findings as to whether or not these payments went toward the purchase price in 1960, but the record is clear that Ann Howard was interested in

and was making steps toward, as early as '55, purchasing this real estate.

In 1960 the real estate was purchased, and, as I said, I will find as a fact, in accordance with the deed, which is Plaintiff's No. 10, by deed dated July 20, 1960, recorded September 22, 1960, the property was conveyed by the Van Emons to Mary Ann Gustin and Paul Walter Herman, brother and sister, and children of Ann Howard.

Thus, an issue presented, since we have to resolve the doctrine of equitable conversion, is who were the actual owners or who was the actual owner of that real estate. The evidence is sharply in dispute. The deposition of Ann Howard says that she was the sole purchaser of that real estate, that at the time she purchased it she had had major surgery for cancer and was contemplating death within six months, having apparently been so advised by her doctor; that as a part of arranging the distribution of her estate, and apparently to cut out a lawyer's fee for scrivening her will, she instructed that title be granted in the name of her two children.

It's interesting to note that there is not one shred of testimony that Paul Herman put one mumbling nickel into the transactions. That is undisputed, that Paul Herman didn't [20] put a nickel, as shown by this record, at least, into the transaction.

On the other hand, Mrs. Gustin testified that she, at the request of her mother, invested $1,000 of her son's guardianship money into the purchase of this house, and that title was taken in the name of herself, Mary Gustin, and her brother Paul Herman, as a matter of convenience to their mother, so as to assure mother that mother could not be evicted from that premises by the unilaterial act of Mary Gustin, and that that was the only reason for placing the name Paul Herman on that deed.

Contrary to that, we have, as I say, the testimony of Ann Howard, and, as well, the testimony of Frank Howard, who

indicated that the money for the purchase price of that property came from Ann Howard and from Frank Howard.

One has to evaluate and determine which view is credible, and in doing that there are a number of factors that this Court thinks are relevant to be considered. Number one, at no time, either on a guardianship fiduciary income tax return to the Federal government or to the State of Maryland, has any ownership interest of Paul Gustin or Mary Gustin, on any personal income tax returns or fiduciary tax returns as to her son Paul, been asserted in the 712 East Capitol Street property.

In no report that has been filed with the Circuit [21] Court of Upper Marlboro, Prince George's County, has there been any reporting to that court of interest in real estate in the District of Columbia owned by Paul Gustin. There is no evidence in this record that the guardian ever obtained authority of the Circuit Court of Prince George's County to invest guardianship funds in real estate in the District of Columbia.

This court deems the testimony of Mary Gustin in virtually every respect she testified to be inherently incredible, mendacious, and unworthy of belief. I affirmatively disbelieve the testimony of Mary Gustin, believing it to be deliberately mendacious. Her recollection, when one reached the crucial stage, had a convenient habit of tailing off into vagueness and a remarkable willingness to respond to questions from her counsel in a manner which she thought her counsel wanted her to respond, and an unwillingness to answer simple questions posed by adverse counsel. I affirmatively disbelieve the testimony of Mary Gustin.

If, in fact, as the evidence shows, some money flowed from Mary Gustin into this real estate, as is evidenced by a check dated May 24, 1960, by Mary Gustin to Carlton G. Van Emon for $1,000, if, in fact, that money was originally fiduciary money, if it were originally guardianship money, that money

had been removed from the guardianship accounts, deposited into her own account, thereby converting it to her [22] own personal use and benefit and does not serve to vest in her son Paul or ~~in her~~ guardian any right, title and interest in 712 East Capitol Street

I find the testimony of Frank Howard and Ann C. Howard as to the circumstances leading to the conveyance being in the name of Mary Howard and Paul Herman to be entirely credible. I will find as a fact that all relevant times, beginning at the time of the original deed, that deed being Plaintiff's Exhibit 10, Ann C. Howard was the sole beneficial owner of premises 712 East Capitol Street. I will find, further, as a fact that the names of Mary Ann Gustin and Paul Walter Herman were placed on that deed at the direction of Ann C. Howard merely as a matter of estate planning as to what she intended at that time to happen to her property, 712 East Capitol Street, upon her death. That intent was subsequently changed, because I will find as a fact she didn't like the woman Paul Herman was going to marry, and it is rather clear of record that Ann C. Howard was, indeed, an independent and bull-headed woman who had her strong likes and dislikes, some of them a bit bigoted, but she is entitled.

She, being the sole beneficial owner—the sole owner of record of the beneficial intrest of that property—her act in signing the contract of January 1, 1974, as a matter of law operated to invoke the doctrine of equitable conversion, converting that property from realty to personalty, [23] and, thus, an asset af her estate vesting in her personal representative as personal property rather than real estate vesting in her heirs of law and next of kin.

I will further hold as a matter of law that the putative deed of correction is null, void and is ordered expunged from the records of the recorder of deeds of the District of Columbia. It is a gratutious, well intended, but gratutious document that casts a cloud on title but has no legal efficacy,

no more than my filing a declaration that I am the owner of the White House could cast a cloud on the ownership of the citzens of the United States in 1600 Pennsylvania Avenue. It is null, void, and is ordered expunged from the record of the recorder of deeds.

This Court will enter an order directing Frank Howard, as administrator of the estate of Ann C. Howard, as soon as the title company can do a search of title and prepare to settle on the contract of January 1, 1974, to execute a deed of conveyance conveying to Ronald D. Stegall all right, title and interest in fee simple or to his designee all right, title and interest in fee simple in real estate in the District of Columbia known as Lot 801, Square 897, improved by premises 712 East Capitol Street, Northeast, in the District of Columbia.

In failing to do so within thirty days of the time that the title company is ready to settle, the Court will [24] appoint a trustee, and I will make that appointment in this order, Mr. Kolker, of a trustee. Leave the name blank so that you don't have to come back to court. If there is default in conveying within thirty days of the title company being ready to perform and Stegall being ready to perform, as required by the contract, then a trustee will be empowered to act as vendor in executing the deed.

This Court will take the liberty of saying certain things it has not decided. This Court has not decided, and wants it clearly understood it has not decided, what claim the guardianship of Paul Gustin or Ann Gustin individually may have against the estate of Ann Howard by way of loan or any other type claim. I am not deciding that whatsoever.

I am not deciding the issues of whether or not Paul Gustin has any claim against his mother. I am not deciding the question of whether or not the State of Maryland has a claim against Mary Gustin. I note that I did

not refer to those two exhibits, and I did not do so any more than I'm going to do so now, where all I'm going to say is that the only thing that perhaps will—I'm just thankful that one of the children for whom public assistance was sought was not Paul, for, indeed, if Paul had been one of those listed, the State of Maryland would have a mortal lock on a perjury prosecution and a fraud prosecution. I'm just thankful that his name was not one of those whose name was listed, although [25] quite candidly, I don't believe her testimony that that is why she answered the question as she did. Those are the things I'm not deciding, as I've indicated.

Counsel present me an order stating the findings of fact and conclusions of law. I don't think I have omitted any necessary findings of fact. You've lived with the case longer than I have. If you perceive that I have omitted a finding of fact or conclusion of law that is necessary to proceeding or for you to defend my position in any other tribunal that it will reach, please include that finding of fact and conclusion of law in your submission to me, and by my signature adopting same I will adopt it as a finding of fact and conclusion of law of the court.

MR. RAFFERTY: Your Honor, I may be somewhat confused. May I ask this by way of clarification? You made a series of findings of fact at the outset concluding, in effect, that the doctrine of equitable estoppel was fully applicable, and then you went on to say that if—and this is the point where I'm confused—if perchance you have been in error then the following shall apply. So, I'm confused now only to the extent that, let's assume nothing further is done by way of an appeal or the like, is it my understanding then that, applying the first set of findings, the doctrine of equitable estoppel applies, and then the contract proceeds as it exists, with the signatures of Mary Gustin and—

[26] THE COURT: Let me respond to you in this way, Mr. Rafferty. As I understand what I have done, particularly given my order clause, I will strike from what I have said that portion saying in the alternative, in the event I'm wrong on the equitable estoppel. To determine who are the proper grantors on a deed of conveyance now, it seems to me it is a necessary finding to determine who was the owner of the beneficial interest in the real estate.

As I had first analyzed it, I was considering appointing a trustee to convey and, thus, not having to confront the question of who the proper grantor was, and leaving the parties to a subsequent proceeding before the auditor to thrash out a proper grantor. Upon reflection, as I listened, and as I thought about this case, it seemed to me that it is necessary to decision and thus is not dictum to determine ownership and, thus, I think you correctly point out to me that I need delete that portion of what I said that indicated that the second one was only a reserve finding in case the first one was in error. I bottom my ruling on both, but out of an abundance of caution I decided them both.

Clearly, if I decided the first one first that would have been a dispositive one if I were right, and I wouldn't have to deal with the second one, but my experience is that trial judges are sometimes wrong, including me on occasion, and it seems to me where there are two issues that [27] have been fully tried before me, where, if I am wrong on the issue of who is the beneficial owner, then I'm still going to have to, now or in a later proceeding, determine the doctrine of equitable estoppel. I might as well determine them both now.

MR. RAFFERTY: The only other question I have—

THE COURT: I don't deem it to be dictum. I deem it to be a finding binding by res judicata.

MR. RAFFERTY: The only other question I then have is that I don't recall what finding you made with respect to

the consideration or the circumstances, surrounding the deed from Paul Herman and his sister, Mary Gustin, to the straw and back.

THE COURT: I think I did.

MR. RAFFERTY: I'm not saying you didn't. I fail to recall it.

THE COURT: May recollection—out of an abundance of caution I will repeat it—is that that conveyance was because Ann Howard was unhappily with the bride-to-be of Paul Herman and didn't want that bride-to-be to have by way of dower or statutory interest or anything else any right, title and interest in her property, that she knew she could get Paul Herman to convey, that she knew she could get Mary Gustin to convey, that she knew she could get Mary Gustin's husband to convey, but she wasn't sure about this newcomer that Paul [28] was about to marry, and, thus, at her direction—and that's where I got into she being a rather bull-headed woman with her own personal predilections and biases—she caused title to be conveyed to a straw and back into her name and that of Mary Gustin, intending no change in ownership other than to eliminate Paul Herman by right of survival if she died. It was still part of her estate plan, and that Mary Gustin was only on that deed to have an interest upon her death, her being Ann Howard's death. I think I made those findings. If not, I make them now and incorporate them.

MR. RAFFERTY: Do I understand that neither Ann Howard nor—I mean Mary Gustin nor her son, as a result of your ruling, have any interest whatsoever in the real estate?

THE COURT: That is correct. That is without regard to the question of their right to claim against the decedent's estate—

MR. RAFFERTY: By virtue of loans.

THE COURT: Or any other claim, and it is, of course, without regard to their—to Mary Gustin's intestate share in her mother's estate.

MR. WENZ: Does this also apply to any of the other property?

THE COURT: It has nothing to do with any other property whatsoever.

MR. GOLDBERG: Your Honor, since I represent the [29] administrator of the estate, I would like to simply clarify a point that you just covered, and if I'm being repetitious I apologize. When Your Honor went to the second issue, Your Honor stated, if, in fact, the ruling of this court is in error with respect to the ruling I just made, i.e., apparent authority, estoppel, detrimental reliance, then Your Honor went on. As I understand Your Honor's comment in response to what has been just stated—

THE COURT: Those two rulings should be just reversed. I should decide the issue of ownership first, then if I am wrong on the issue of ownership then the estoppel.

MR. GOLDBERG: Then, Your Honor, this is not a conditional ruling at this time. We are under directive to follow this ruling by the Court.

THE COURT: No condition whatsoever other than him performing at title company under the contract.

MR. GOLDBERG: This is an unequivocal directive to the administrator to proceed to settlement.

THE COURT: That's correct. Mr. Kolker, you should set up your findings on the ownership first, and if in error on the ownership then estoppel.

MR. GOLDBERG: One further thing, Your Honor. In light of your ruling, I would respectfully ask Mr. Kolker to dismiss count two of his complaint, which is still open on the issue of damages, since it now becomes a moot question.

[30] MR. KOLKER: I do that.

MR. HARDY: May I ask the Court a question?

THE COURT: Of course. Of course, Mr. Kolker, I deny your request for attorneys fees.

MR. KOLKER: Your Honor, that does raise the question about costs, however.

THE COURT: Costs to the plaintiff.

MR. HARDY: Mrs. Gustin has the place rented now, and as the guardian in the court in Maryland is accounting for the money that comes in and the expenses to run the place. It's large, and there are a number of people rooming in it. Is it my understanding that you're ousting her immediately from the place?

THE COURTS I have not said anything and am not going to get into that thicket whatsoever. I have given it some thought as to who is entitled to rents during a period of equitable conversion. That is not a necessary issue before me now, and I am not going to cross one more bridge than I have to cross before I get to it.

MR. HARDY: On what date are you ordering her to get out of the property?

THE COURT: I'm not ordering her to get out at all. I am ordering that title be conveyed as soon as the title company can arrange for settlement.

MR. GOLDBERG: Your Honor, in that regard may I make [31] this inquiry: Is Your Honor's ruling, placing equitable title and therefore ownership in the estate, effective as of this date?

THE COURT: As soon as I signed an order.

MR. GOLDBERG: Then, may I ask you this: Some weeks ago, in order to avoid the filing of additional papers on the part of Mrs. Gustin, we voluntarily vacated the prop-

erty with an understanding and agreement between the judge and I that such vacating would be without waiver of the rights of either the estate or Mrs. Gustin, is that correct, judge?

MR. HARDY: That's correct.

MR. GOLDBERG: Now, in the circumstances, as I understand it, with Your Honor's ruling today the estate is free to do such things as it feels is justified in the circumstances.

THE COURT: Counsel, I think I have said all I'm going to say, because you are now getting me into the areas of advisory opinions that are not necessary to resolve the issue that is now before me. I know you both to be skilled —all four or five to be skilled diligent counsel. You have the same resources for research as I do.

MR. HARDY: One question. I haven't finished. When does she have to get out?

THE COURT: I don't know, and I'm not going to say. I have said who owns title, and I will leave it to counsel.

[32] MR. HARDY: And after they get title I can negotiate with the new title person.

THE COURT: Further dependent sayeth not.

MR HARDY: All right. One other question. I shall note an appeal. She can stay there in the meantime. That's what I'll hope she'll do.

THE COURT: I'm sure, Mr. Rafferty, if an appeal is noted you will file appropriate proceedings if you desire a stay, to seek a stay with appropriate supersedeas bond.

MR. HARDY: Will you set the bond now?

THE COURT: No, sir. Number one, no notice of appeal has been filed.

(Thereupon, the proceeding was concluded at approximately 4:15 p.m.)

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Filed Dec. 19, 1975

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 9161 JANUARY TERM, 1975

CA 1418-74

MARY ANN GUSTIN, *Appellant,*

v.

RONALD D. STEGALL

and

FRANK HOWARD, Administrator,

Estate of Ann C. Howard, *Appellees.*

BEFORE: Reilly, Chief Judge, Kelly and Harris, Associate Judges.

Order

On consideration of appellant's petition for reconsideration and rehearing, it is

ORDERED that appellant's aforesaid petition is denied.

PER CURIAM

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